

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

DESTIN WHITMORE,

Movant,

v.

UNITED STATES OF AMERICA,

Respondent.

CRIMINAL ACTION NO.
1:14-CR-0054-CAP

CIVIL ACTION NO.
1:16-CV-1128-CAP

ORDER

This action is before the court on the report and recommendation (“R&R”) of the magistrate judge [Doc. No. 67] and the government’s objections thereto [Doc. No. 70]. The objections are **OVERRULED**. The R&R is **ADOPTED** as the order and opinion of this court.

Accordingly, the Movant’s motion under 28 U.S.C. § 2255 [Doc. No. 59] is **GRANTED** as to Ground One for the limited relief of allowing the Movant to pursue an out-of-time appeal. The remaining claims in the Movant’s motion are **DISMISSED WITHOUT PREJUDICE**.

To effectuate relief on Ground One:

1. The criminal judgment in this action is **VACATED**;

2. The sentences of imprisonment, supervised release, and special assessment imposed by this court on March 26, 2015 [Doc. No. 51] are REIMPOSED with appropriate credit for time already served;

3. Movant is ADVISED that: (a) he has the right to an appeal; (b) if he is unable to pay the cost of an appeal, he may apply for in forma pauperis status to pursue the appeal; (c) if he so requests, the Clerk of this Court will prepare and file a notice of appeal on his behalf; (d) with few exceptions, any notice of appeal must be filed within fourteen days of the entry of this order.

This case is referred to Magistrate Judge John K. Larkins, III for appointment of CJA counsel to represent Movant on appeal. *See* Rule of Criminal Procedure 44(a).

Civil Action number 1:16-CV-1128-CAP-JKL is DISMISSED.

SO ORDERED, this 17th day of April, 2017.

/s/ Charles A. Pannell, Jr.
CHARLES A. PANNELL, JR.
United States District Judge